

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16048
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On August 24, 2001, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner), proposing income tax, penalty, and interest for the taxable year 1996 in the total amount of \$3,366. On October 23, 2001, the petitioner filed a timely appeal and petition for redetermination; however, the petitioner did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information showing the petitioner sold Idaho real property in 1996. The Bureau researched the Tax Commission's records and found that the petitioner did not file an Idaho individual income tax return for the taxable year 1996. Under Idaho law, income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the "ownership or disposition of any interest in real or tangible personal property located in Idaho." Idaho Code section 63-3026A(3)(ii).

The Bureau sent the petitioner letters asking the petitioner about the sale of the Idaho property and his requirement to file an Idaho income tax return. The petitioner did not respond to the Bureau's letters. The Bureau determined the petitioner was required to file an Idaho income tax return, so it prepared a return for the petitioner and sent him a Notice of Deficiency Determination.

The petitioner protested the Bureau's determination stating that the Notice of Deficiency Determination is incorrect because the property had been left as part of an inheritance to several individuals and that he should only have to pay tax on a portion of the gain not on all of the gain.

The Tax Commission sent the petitioner a letter identifying his appeals rights for having the Notice of Deficiency Determination redetermined. The petitioner did not respond. The Tax Commission sent a follow-up letter to the petitioner but he still failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The facts show and the petitioner did not dispute that there was a sale of Idaho property. Therefore, if the petitioner realized a gain on the sale, the gain is considered Idaho source income (Idaho Code section 63-3026A(3)(ii)). If the gain is in excess of the filing requirement provided for in Idaho Code section 63-3030, the petitioner is required to file an Idaho income tax return.

The information available shows the petitioner sold Idaho property for \$35,000 in 1996. The petitioner may have had basis in the property but that basis was not documented. The only information the Tax Commission has regarding the sale is the gross proceeds from the sale. The Bureau used the gross receipt amount as the petitioner's adjusted gross income for Idaho.

The petitioner has been given numerous opportunities to provide additional documentation to show that the Bureau's calculation of his Idaho income tax liability was incorrect, however, the petitioner has failed to do so. Since the petitioner has not established that the amount of Idaho taxable income set out in the Notice of Deficiency Determination is incorrect or otherwise erroneous, the Tax Commission has no alternative but to affirm the amount of Idaho taxable income shown in the Notice of Deficiency Determination. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct.

App. 1986) (a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous).

The Bureau added interest and penalty to the petitioner's return per Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them to be in accordance with the Idaho Code.

WHEREFORE, the Notice of Deficiency Determination dated August 24, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$2,090	\$523	\$966	\$3,579

Interest is calculated through May 15, 2003, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Certified Mail No. [Redacted]
